

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jackie Manginelli	Team: Squad #10	CCRB Case #: 202000291	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 01/11/2020 10:00 PM	Location of Incident: Outside of 331 Rockaway Avenue in Brooklyn.	Precinct: 73	18 Mo. SOL 7/11/2021	EO SOL 2/25/2022	
Date/Time CV Reported Mon, 01/13/2020 3:33 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 01/13/2020 3:33 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Samuel Hui	03593	953978	073 PCT
2. POM Frank Hernandez	22758	962470	073 PCT
3. POM Richard Catapano	05751	961675	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Samuel Hui	Abuse: Sergeant Samuel Hui stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.SGT Samuel Hui	Abuse: Sergeant Samuel Hui frisked § 87(2)(b)	
C.SGT Samuel Hui	Abuse: Sergeant Samuel Hui searched § 87(2)(b)	
D.POM Richard Catapano	Abuse: Police Officer Richard Catapano frisked § 87(2)(b)	
E.POM Frank Hernandez	Abuse: Police Officer Frank Hernandez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
F.POM Frank Hernandez	Abuse: Police Officer Frank Hernandez damaged § 87(2)(b)'s property.	
G.SGT Samuel Hui	Abuse: Sergeant Samuel Hui searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
H.SGT Samuel Hui	Abuse: Sergeant Samuel Hui failed to provide § 87(2)(b) with a business card.	
I.POM Frank Hernandez	Abuse: Police Officer Frank Hernandez failed to provide § 87(2)(b) with a business card.	
J.SGT Samuel Hui	Abuse: Sergeant Samuel Hui failed to provide § 87(2)(b) with a business card.	
K.POM Frank Hernandez	Abuse: Police Officer Frank Hernandez failed to provide § 87(2)(b) with a business card.	
L.POM Richard Catapano	Abuse: Police Officer Richard Catapano failed to provide § 87(2)(b) with a business card.	

### Case Summary

On January 13, 2020, § 87(2)(b) filed this complaint with the CCRB as a walk-in complainant.

On January 11, 2020, at approximately 10:00 p.m., Sergeant Samuel Hui, PO Frank Hernandez, and PO Richard Catapano, all of the 73<sup>rd</sup> Precinct, pulled over § 87(2)(b) and § 87(2)(b) outside of 331 Rockaway Avenue in Brooklyn (**Allegation A – Abuse of Authority: Vehicle Stop:**

§ 87(2)(g) Sergeant Hui approached the driver's side door of the vehicle and told § 87(2)(b) that his car smelled like marijuana. He asked § 87(2)(b) to step out of the car and § 87(2)(b) complied. Sergeant Hui then pat-down and searched § 87(2)(b)'s pants pockets (**Allegation B – Abuse of Authority: Frisk:** § 87(2)(g) **Allegation C – Abuse of Authority: Search of person:** § 87(2)(g)

PO Catapano asked § 87(2)(b) to step out of the vehicle and he complied. He pat-down § 87(2)(b) (**Allegation D – Abuse of Authority: Frisk:** § 87(2)(g) § 87(2)(b) and § 87(2)(b) were escorted to the back of their vehicle. PO Hernandez then searched the front seats, back seats, and glove compartment of § 87(2)(b)'s car (**Allegation E – Abuse of Authority: Vehicle search:** § 87(2)(g) PO Hernandez allegedly broke open the glove compartment with his flashlight in order to search it (**Allegation F – Abuse of Authority: Property damage:**

§ 87(2)(g)

Sergeant Hui opened § 87(2)(b)'s trunk and searched it (**Allegation G – Abuse of Authority: Vehicle search:** § 87(2)(g) Nothing was recovered from inside of § 87(2)(b)'s car and Sergeant Hui told § 87(2)(b) that he was free to go and § 87(2)(b) and § 87(2)(b) left the scene. They were not issued any summonses. Sergeant Hui, PO Hernandez, and PO Catapano did not provide § 87(2)(b) or § 87(2)(b) with business cards (**Allegations H, I, J, and K—Abuse of Authority: Failure to provide RTKA card:** § 87(2)(g) and **Allegation L – Abuse of Authority: Failure to provide RTKA card:** § 87(2)(g)).

Body-worn camera footage was obtained from Sergeant Hui (**Board Review 07-08**), PO Hernandez (**Board Review 09-10**), and PO Catapano (**Board Review 11-12**). § 87(2)(b) provided a cellphone video taken by § 87(2)(b) during this incident (**Board Review 13-14**). Footage from exterior cameras on the BP Amoco gas station on Atlantic Avenue and Monaco Street was also obtained (**Board Review 15-16**).

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### Findings and Recommendations

**Allegation A – Abuse of Authority: Sergeant Samuel Hui stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

§ 87(2)(b) was interviewed at the CCRB on January 13, 2020 (**Board Review 01**). § 87(2)(b) provided a phone statement on January 17, 2020 (**Board Review 02**). § 87(2)(b) provided a phone statement on January 31, 2020 (**Board Review 03**). § 87(2)(b) provided a phone statement on January 31, 2020 (**Board Review 04**). PO Hernandez was interviewed remotely over MS Teams on November 20, 2020 (**Board Review 05**). Sergeant Hui was interviewed remotely over MS Teams on March 2, 2021 (**Board Review 06**).

§ 87(2)(b) stated that he got into his car with § 87(2)(b) in the passenger seat and drove out of

the gas station. He made a right turn, and put on his right turn signal, out of the gas station on Atlantic Avenue and got into his left-most lane using his left-lane turn signal twice. § 87(2)(b) and § 87(2)(b) followed behind § 87(2)(b) in two separate cars. Sergeant Hui, PO Hernandez, and PO Catapano, pulled over § 87(2)(b) and § 87(2)(b) using their emergency lights and siren, on the corner of Rockaway Avenue and East New York Avenue. Sergeant Hui approached § 87(2)(b) § 87(2)(b)'s driver's side door and told him that he failed to signal coming out of the BP Amoco gas station on the corner of Atlantic Avenue and Monaco Street.

§ 87(2)(b) and § 87(2)(b) statements were generally consistent with that of § 87(2)(b) § 87(2)(b).

Sergeant Hui stated that he noticed § 87(2)(b)'s vehicle exit the gas station, and drive from the right-most lane into the left-most lane on Atlantic Avenue without signaling. Sergeant Hui thought that there were approximately three to four lanes on Atlantic Avenue. He did not remember if they went through all of these lanes without signaling. He did not notice the vehicle commit any additional vehicle or traffic infractions apart from the failure to signal. Sergeant Hui pulled over § 87(2)(b)'s vehicle using emergency lights.

PO Hernandez stated that he observed two vehicles leaving a BP Amoco gas station on Atlantic Avenue in Brooklyn. He was sitting in the back seat of the police vehicle, Sergeant Hui was driving the vehicle, and PO Catapano was in the front passenger seat. One vehicle was a black Mercedes and the other was a silver Mercedes § 87(2)(b)'s vehicle). The black vehicle left the gas station and went from the right-most lane on Atlantic to the left-most lane on Atlantic without signaling. He was unsure if the vehicle signaled as they left the gas station. Atlantic Avenue had three lanes on each side of the street. The vehicle got into the turning lane and made a left turn onto Rockaway Avenue. PO Hernandez was unsure if the silver Mercedes signaled because he was only paying attention to the black Mercedes. He clarified later in his statement, upon seeing body-worn camera footage, that § 87(2)(b)'s vehicle was in fact a silver Mercedes. PO Hernandez and Sergeant Hui both noticed that the vehicle did not signal and pulled over the vehicle. He did not remember noticing any additional vehicle or traffic infractions committed. They pulled over the vehicle with the emergency lights and sirens in the vicinity of East New York Avenue and Rockaway Avenue.

Sergeant Hui's body-worn camera footage captures this incident in its entirety (**Board Review 07-08**). During the car stop, at 02:00, Sergeant Hui tells § 87(2)(b) (who standing at the back of his vehicle) that he made a right turn out of the gas station on Atlantic Avenue and that from the right-lane he went to the left lane without signaling. § 87(2)(b) said that he did signal.

Footage from the BP Amoco gas station on Atlantic Avenue and Monaco Place in Brooklyn captured § 87(2)(b) and § 87(2)(b) prior to this incident (**Board Review 21**). In Camera 03, between 00:02 and 00:07, the top right-hand side of the screen shows § 87(2)(b)'s car, a silver Mercedes Benz sedan, exiting the gas station. § 87(2)(b) turns on his right-hand blinker as he turns right out of the gas station onto Atlantic Avenue. He turns on his left-hand blinker twice to get into the left-most lane.

Both Sergeant Hui and PO Hernandez were shown the above-mentioned video during their interviews. Neither officer changed their statement, nor did they mention any additional vehicle or traffic infractions that § 87(2)(b) committed while driving.

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It was undisputed that Sergeant Hui, pulled over § 87(2)(b) and § 87(2)(b). It was also undisputed that Sergeant Hui told § 87(2)(b) they pulled him over because he failed to signal to his left-most lane after he exited the BP Amoco gas station on the corner of Atlantic Avenue and Monaco Street in Brooklyn. Video footage obtained from the BP Amoco gas station corroborated § 87(2)(b)'s statement that he turned on his right-hand signal as he was leaving the gas station, and, put on his left-hand signal twice to get into his left-most lane on Atlantic Avenue. The footage contradicted the officers statements, and when presented to the officers, the officers did not amend their statements. Neither officer provided any reason why they may have mistakenly observed this violation.

Vehicle and Traffic Law Article 28 Section 1163 states that no person shall so turn any vehicle without giving an appropriate signal (**Board Review 26**).

People v. Ingle, 36 N.Y.2d 413 (1975) states that an automobile on a public highway may be stopped for a “routine traffic check” when a police officer reasonably suspects a violation of the Vehicle and Traffic Law. Absent reasonable suspicion of a vehicle violation, a “routine traffic check” to determine whether or not a vehicle is being operated in compliance with the Vehicle and Traffic Law is permissible only when conducted according to nonarbitrary, nondiscriminatory, uniform procedures for detecting violations. The degree of suspicion is required to justify the stop is minimal, however, an officer must have a specific and articulable reason to stop a vehicle (**Board Review 27**).

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**Allegation B – Abuse of Authority: Sergeant Samuel Hui frisked § 87(2)(b).**

**Allegation C – Abuse of Authority: Sergeant Samuel Hui searched § 87(2)(b).**

**Allegation E – Abuse of Authority: Police Officer Frank Hernandez searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation F – Abuse of Authority: Police Officer Frank Hernandez damaged § 87(2)(b)'s property.**

**Allegation G – Abuse of Authority: Sergeant Samuel Hui searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

§ 87(2)(b) stated that Sergeant Hui told him that his car smelled like marijuana and asked if he had smoked in the car. § 87(2)(b) replied that he had not smoked in the car nor had he smoked that day. Sergeant Hui told § 87(2)(b) to exit the car and § 87(2)(b) complied. Sergeant Hui pat-down § 87(2)(b)'s pants, chest, waist, and ankles. He went into § 87(2)(b)'s front-left pants pocket, his front-right pants pocket, and his back-right pants pockets. Prior to stepping out of the vehicle, § 87(2)(b) left his cellphone recording on the floor of the passenger side of the car. While § 87(2)(b) and § 87(2)(b) were speaking with Sergeant Hui about why they were pulled over at the back of his vehicle, PO Hernandez searched the inside of the vehicle. PO Hernandez searched the front seats, back seats, under the seats, in the center console, and in the glove compartment of the car. PO Hernandez did not recover anything from the car. § 87(2)(b) and § 87(2)(b) sat back inside of the car and realized that the glove compartment was broken and would not close. § 87(2)(b) told PO Hernandez that he broke the glove compartment and PO Hernandez denied breaking the glove compartment and said he opened the glove compartment with the glove compartment key. § 87(2)(b) told PO Hernandez that the glove compartment could not be opened since May of 2019. While § 87(2)(b) and § 87(2)(b) were sitting inside of the car, Sergeant Hui

searched the trunk of § 87(2)(b)'s car.

§ 87(2)(b) and § 87(2)(b)'s statements were generally consistent with that of § 87(2)(b).

Sergeant Hui stated that he smelled burnt marijuana coming from the vehicle, but he did not see any marijuana in plain sight inside the vehicle. Sergeant Hui did not remember if § 87(2)(b) denied or affirmed the smell of marijuana or if he had smoked that day. Sergeant Hui asked § 87(2)(b) to step out of the vehicle and he complied. Sergeant Hui then pat-down § 87(2)(b) due to the smell of marijuana in the vehicle and to make sure that he did not have any weapons on his person. Sergeant Hui did not recall seeing any bulges on § 87(2)(b)'s person and did not remember if he went into any of § 87(2)(b)'s pockets. Sergeant Hui did not recover anything on § 87(2)(b)'s person. Sergeant Hui did not remember speaking with the other officers prior to searching § 87(2)(b)'s vehicle and only personally searched the trunk. Sergeant Hui did not remember searching any bags inside the trunk of the vehicle. PO Hernandez searched the interior of the vehicle, but Sergeant Hui was not sure if PO Hernandez searched the glove compartment. Sergeant Hui did not notice that the glove compartment was broken after the search was conducted and did not specifically instruct PO Hernandez to search the glove compartment. Sergeant Hui did not think that § 87(2)(b) or § 87(2)(b) complained of the glove compartment being broken. No contraband was recovered from the trunk of the vehicle. Sergeant Hui did not remember if the other officers mentioned that they recovered anything from the search of the interior of the vehicle.

PO Hernandez stated that he smelled burnt marijuana coming from the entirety of the vehicle as § 87(2)(b) opened his windows, but there was no smoke coming out of the windows of the vehicle. PO Hernandez did not remember if the individuals appeared to be under the influence of marijuana. Sergeant Hui asked § 87(2)(b) to step out of the car, frisked him, and told him to go to the back of the vehicle. PO Hernandez did not remember exactly where Sergeant Hui pat-down § 87(2)(b) and he did not remember seeing Sergeant Hui go into § 87(2)(b)'s pockets. Nothing was recovered from § 87(2)(b)'s person. From the outside of the vehicle, PO Hernandez did not observe any contraband or weapons, but PO Hernandez searched the vehicle because of the odor of marijuana. PO Hernandez searched the seats, the center console, and the glove compartment of the vehicle. The glove compartment was locked at first, but PO Hernandez unlocked it using § 87(2)(b)'s key. He encountered difficulty opening the glove compartment because one side of the glove compartment was opening, and the other side was not. He saw an object, that looked like a small green case, about the size of a phone, inside of the glove compartment. He opened the glove compartment more because he did not know what the green case was. He later discovered the object was a bible, but the pages were not facing him so he could not tell what it was. He pulled on the glove compartment to get his hand into it. The glove compartment eventually opened all the way and he did not see any marijuana inside the glove compartment. The glove compartment closed without issue and did not appear to be broken. PO Hernandez did not recover any contraband from the vehicle. Sergeant Hui searched the trunk of the vehicle. Sergeant Hui did not recover any contraband from the trunk of the vehicle. § 87(2)(b) and § 87(2)(b) complained of the glove compartment being broken and § 87(2)(b) mentioned to PO Hernandez that the glove compartment had been broken for a year, but he did not specify how the glove compartment was broken.

Sergeant Hui's body-worn camera footage captured this incident in its entirety (**Board Review 07-08**). At 01:07, Sergeant Hui pats-down § 87(2)(b)'s waist-band area. He asks § 87(2)(b) if he has a knife, blade, or razor on him. § 87(2)(b) replies that he does not. Sergeant Hui feels § 87(2)(b)'s front right-hand pocket and reaches into it. He pulls out rolling papers and asks about them. § 87(2)(b) says that they are rolling papers but that there is no smoke. Sergeant Hui puts his

fingers into § 87(2)(b)'s front left pocket. Sergeant Hui reaches around and pats-down § 87(2)(b)'s back pants pockets. He reaches into his back left pocket and pulls out a comb and puts it back in. He pats-down § 87(2)(b)'s upper-chest area. He tells § 87(2)(b) that if he had a bag of marijuana on him then to let him know. Sergeant Hui tells § 87(2)(b) and § 87(2)(b) to have a seat in their car. He opens the trunk of § 87(2)(b)'s car and searches it at 05:11. He opens a bag of clothing and searches through it.

PO Hernandez's body-worn camera footage captures this incident in its entirety (**Board Review 09-10**). At 00:38, an officer says, "If this is him." At 00:44, an officer is heard saying, "You think he might take off?" At 02:45, PO Hernandez walks towards the passenger side of the vehicle. He searches the passenger side door and the passenger seat. He attempts to open the glove compartment; however, the glove compartment is out of view of the camera. At 03:10, keys jingle. There is a clicking noise and keys jingling for approximately one minute. PO Hernandez exits the vehicle and closes the passenger side door. He opens the back-right passenger-side door and searches the door and seats. He exits the vehicle and closes the door. He walks around to the driver's side door, opens it, and searches inside of the door and the driver's seat. He closes the door.

PO Catapano's body-worn camera footage captured this incident in its entirety (**Board Review 11-12**). At 01:12, PO Catapano asks § 87(2)(b) to step out of the car. PO Catapano asks § 87(2)(b) to stand in the back with § 87(2)(b). When Sergeant Hui tells § 87(2)(b) and § 87(2)(b) to have a seat in their car, PO Catapano follows them to the passenger side door of the car. At 04:58, § 87(2)(b) says, "He ripped it open bro? Wow bro, he broke my car." In the video, § 87(2)(b) repeatedly attempts to close the glove compartment and the door continues to swing open and down. At 05:12, PO Hernandez is heard saying, "I didn't break that thing." § 87(2)(b) says that PO Hernandez, "Yanked it open" and PO Hernandez says that he did not. § 87(2)(b) speaks with PO Hernandez about how he broke the glove compartment. PO Catapano remains at the passenger door while Sergeant Hui searches the trunk of § 87(2)(b)'s car.

Footage from § 87(2)(b)'s cellphone captured this portion of the incident in its entirety (**Board Review 13-14**). The cellphone is on the floor of the front passenger side of the car and is angled upwards towards the glove compartment. At 01:58 minutes, a flashlight shines through the front passenger seat. PO Hernandez enters the vehicle and begins searching the vehicle. At 02:13, PO Hernandez attempts to open the glove compartment. He takes the keys from the driver's side of the car and, between 02:23 and 02:40, attempts to open the glove compartment with the key. At 02:40, the glove compartment is still closed, and PO Hernandez looks inside of the glove compartment with this flashlight. He attempts to open the glove compartment by sticking his flashlight into the glove compartment and pulling downwards on the glove compartment with his hand. At 03:16, the glove compartment opens and falls. PO Hernandez takes a book out from the glove compartment and puts it back in.

It was undisputed that Sergeant Hui pat-down § 87(2)(b) after asking him to step out of his vehicle. It was undisputed that PO Hernandez searched § 87(2)(b)'s car. Due to video evidence, it was also undisputed that PO Hernandez used his flashlight to open § 87(2)(b)'s glove compartment in order to search it. It was undisputed that Sergeant Hui searched the trunk of § 87(2)(b)'s vehicle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

People v. Chestnut, 43 A.D.2d 260 found that the smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants (**Board Review 18**).

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**Allegation H—Abuse of Authority: Sergeant Samuel Hui failed to provide § 87(2)(b) with a business card.**

**Allegation I – Abuse of Authority: Police Officer Frank Hernandez failed to provide § 87(2)(b) with a business card.**

**Allegation**

**Allegation J – Abuse of Authority: Sergeant Samuel Hui failed to provide § 87(2)(b) with a business card.**

**Allegation K – Abuse of Authority: Police Officer Frank Hernandez failed to provide § 87(2)(b) with a business card.**

§ 87(2)(b) stated that none of the officers provided him with business cards.

Sergeant Hui stated that after he turned off his body-worn camera, he thought he asked § 87(2)(b) and § 87(2)(b) if they wanted a business card. He did not think that he gave them a business card. He did not remember if they said that they wanted or did not want his business card. He did not remember if PO Hernandez gave his business card to § 87(2)(b) or § 87(2)(b).

PO Hernandez stated that he did not provide either § 87(2)(b) or § 87(2)(b) with a business card. Neither § 87(2)(b) nor § 87(2)(b) asked him for a business card. Sergeant Hui did not provide § 87(2)(b) or § 87(2)(b) with a business card. Officers must provide individuals with a business card when a person is stopped, and when individuals ask for one. PO Hernandez did not think that he had to provide an individual with a business card for a car stop or when he searched someone's vehicle.

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It was undisputed that § 87(2)(b) did not receive a business card from any of the officers from this incident.

According to the Right to Know Act as defined in Section 14-174 of the New York City Administrative Code, an officer must offer a business card to someone at the conclusion of any law enforcement activity defined under the act, including frisks and search of persons or property

including vehicles, that does not result in an arrest or summons (**Board Review 22**).

According to NYPD Patrol Guide Procedure 203-09, an officer must provide a business card for a law enforcement activity, including frisks and searches of persons or property including vehicles (**Board Review 23**).

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**Allegation D – Abuse of Authority: Police Officer Richard Catapano frisked § 87(2)(b)**  
**Allegation L – Abuse of Authority: Police Officer Richard Catapano failed to provide § 87(2)(b)**  
**with a business card.**

It was alleged that PO Catapano frisked § 87(2)(b) and failed to offer a business card.

DAO confirmed that PO Catapano was no longer a member of the NYPD as of August 2, 2020 (**Board Review 17**).

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has been party to two prior CCRB complaints (**Board Review 19**).
  - § 87(2)(b)
  -
- Sergeant Hui has been a member of service for eight years and this is the seventeenth CCRB complaint for which he has been a subject.
  - CCRB Case No. 201610413 involved allegations of abuse of authority (frisk, vehicle search, and discourtesy-action) that were substantiated. It also involved allegations of abuse of authority (refusal to provide shield number, threat of arrest, threat of summons) and discourtesy (word) that were unsubstantiated.
  - CCRB Case No. 201904815 involved an allegation of abuse of authority (question) that was substantiated. It also involved allegations of abuse of authority (frisk and vehicle search) that were unsubstantiated and abuse of authority (stop and question) that were exonerated.
- PO Hernandez has been a member of service for four years and this is the ninth CCRB complaint for which he has been a subject. § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- A request for any Notice of Claim regarding this incident has been submitted to the New York City Comptroller's Office. No notice of claim was located regarding this case



**(Board Review 20).**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
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[REDACTED]  
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[REDACTED]  
[REDACTED]

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Squad No.: 10

Investigator: Jackie Manginelli      Inv. Jackie Manginelli      03/31/2021  
Signature      Print Title & Name      Date

Squad Leader: Eric Rigie      IM Eric Rigie      4/1/2021  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date